

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

OTIS WARREN DIMICK
554 Schoellkopf Road
Cowlesville, New York 14037,

Plaintiff,

v.

GARY J. MUENCH
13211 Henskee Road
Alden, New York 14004,

Defendant.

SUMMONS

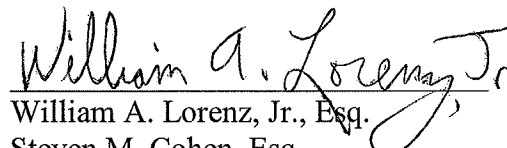
Index No.:

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action, and to serve a copy of your Answer or, if the Complaint is not served with a Summons, to serve a Notice of Appearance, on Plaintiff's attorney within **twenty** (20) days after the service of this Summons, exclusive of the day of service, or within **thirty** (30) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

This action is brought in ERIE COUNTY based upon Defendant's residence.

DATED: September 19, 2019
Amherst, New York


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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

OTIS WARREN DIMICK,

Plaintiff,

v.

GARY J. MUENCH,

Defendant.

COMPLAINT

Index No.:

Plaintiff OTIS WARREN DIMICK, by and through his attorneys, HOGANWILLIG, PLLC, as and for his Verified Complaint against Defendant GARY J. MUENCH herein, alleges as follows:

1. At all relevant times hereinafter mentioned, Plaintiff was and is a resident of the County of Wyoming and State of New York.
2. Upon information and belief, and at all times hereinafter mentioned, Defendant was and is a resident of the County of Erie, State of New York who, during the time period of the incidents alleged herein, resided in the County of Wyoming and State of New York.

FACTS COMMON TO ALL CLAIMS

3. Plaintiff, then an infant, resided with his parents in the County of Wyoming, State of New York in the mid-1980s.
4. Beginning in approximately 1986, Defendant, a friend of one of Plaintiff's brothers, began assisting Plaintiff's family with chores around their farm and home in the County of Wyoming, State of New York.

5. Beginning in approximately 1986, when Plaintiff was approximately thirteen (13) years old, Plaintiff was the victim of sexual harassment, sexual abuse, and violence by or at the direction of Defendant.

6. The incidents experienced by then-infant Plaintiff over a period of approximately four (4) years included, but are not limited to, the following:

- A. On numerous, Defendant would “groom” then-infant Plaintiff by assisting Plaintiff around the farm and the house with chores to gain Plaintiff’s trust.
- B. On numerous occasions, Defendant would force then-infant Plaintiff to fondle his genitals.
- C. On numerous occasions, Defendant would fondle then-infant Plaintiff’s genitals.
- D. On numerous occasions, Defendant would give then-infant Plaintiff forced oral sex.

7. Upon information and belief, Defendant continued to attempt to abuse Plaintiff in or about 1990, prompting Plaintiff to hide in Plaintiff’s brother’s room until Defendant gave up looking for him.

8. Upon information and belief, Plaintiff sent Defendant a letter in or about 1990 asking Defendant to stay away from him going forward.

9. Venue is proper in Erie County based on Defendant’s current residence.

10. This action is brought pursuant to CPLR § 214-G, as added by the New York Child Victims Act, which has revived claims of child sexual abuse for a period of one year

beginning on August 14, 2019, six months after the effective date of the section (February 14, 2019). This action is timely commenced.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT:
ASSAULT

11. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "10" as though more fully set forth herein.

12. Defendant's actions in sexually abusing then-infant Plaintiff over a period of approximately four (4) years placed Plaintiff in apprehension of an imminent harmful and offensive bodily contact.

13. That the aforesaid assaults were unwarranted, unjustified, and unprovoked by Plaintiff and without his consent, as Plaintiff did not and could not give consent.

14. That by reason of the foregoing actions of Defendant, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT:
BATTERY

15. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "14" as though more fully set forth herein.

16. Defendant's actions in sexually abusing then-infant Plaintiff over a period of approximately four (4) years constitutes Defendant intentionally making offensive bodily contact with Plaintiff.

17. That the aforesaid offensive bodily contact was unwarranted, unjustified, and unprovoked by Plaintiff and without his consent, as Plaintiff did not and could not give consent as an infant.

18. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

19. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "18" as though more fully set forth herein.

20. Defendant intentionally and recklessly touched Plaintiff on the aforementioned occasions over a period of four (4) years, including forced oral sex.

21. Defendant's actions in sexually abusing then-infant Plaintiff over a period of approximately four (4) years was extreme, outrageous, shocking, and exceeding all reasonable bounds of decency.

22. That the aforesaid conduct was done with the intention of causing Plaintiff severe emotional distress.

23. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

24. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "23" as though more fully set forth herein.

25. Defendant owed a duty to Plaintiff, once he took him into his custody from his parents, to reasonably protect her from harm and not sexually abuse him.

26. Defendant intentionally and recklessly breached that duty by touching Plaintiff on the aforementioned occasions over a period of four (4) years, including by forced oral sex.

27. Defendant's conduct in repeatedly sexually abusing then-infant Plaintiff unreasonably endangered Plaintiff's physical safety and caused Plaintiff to fear for his own safety over the period of abuse lasting approximately four (4) years.

28. Plaintiff suffered several emotional and mental suffering and distress due to Defendant's actions, as well as fear for his own physical safety.

29. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANT:
PUNITIVE DAMAGES

30. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "29" as though more fully set forth herein.

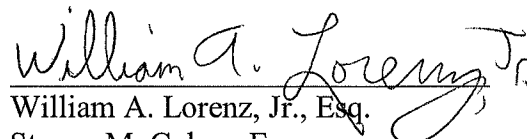
31. Defendant's actions in being violent, sexually harassing, and/or committing other misconduct against Plaintiff is tantamount to a wanton and conscious disregard for the safety of Plaintiff, and warrants the imposition of punitive damages.

32. By reason of the malicious, intentional, willful, and/or negligent conduct of Defendant herein, and by such other acts that were morally reprehensible, Defendant's conduct evidenced a callous disregard for the safety of Plaintiff, and said acts constituted a wanton, reckless and/or malicious disregard for the rights of others and, as a result thereof, Plaintiff demands punitive damages.

33. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction, and for such other and further relief to Plaintiff as this Court deems just and proper.

DATED: September 19, 2019
Amherst, New York


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